

# STATE WATER QUALITY STANDARDS AND CONSIDERATION OF TREATY RIGHTS



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# OVERVIEW

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- ♦ Clean Water Act
  - Water Quality Standards
  - Human Health Criteria
    - Fish Consumption Rate
    - Cancer Risk Levels
- ♦ Treaty Rights Issues
- ♦ State WQS in Region 10, EPA
  - Oregon
  - Washington
  - Idaho
  - Alaska

# CLEAN WATER ACT

## 33 U.S.C. §§1251-1587

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- ◊ Primary federal law governing surface water pollution
- ◊ Objective is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters
- ◊ Goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water
  - "fishable/swimmable"
  - Fishable includes eating fish
- ◊ Administered by U.S. Environmental Protection Agency, in coordination with state and tribal governments

# WATER QUALITY STANDARDS (WQS) PROGRAM

## CWA §303; 40 CFR Part 131

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*What is a WQS?*

- ✦ Foundation of the water quality-based pollution control program under CWA
- ✦ WQS define the water quality goals of a water body by:
  - Designating water uses
  - Setting water quality criteria (WQC) necessary to protect the designated uses
  - Protecting water quality through anti-degradation provisions

# WATER QUALITY STANDARDS (WQS) PROGRAM

## CWA §303; 40 CFR Part 131

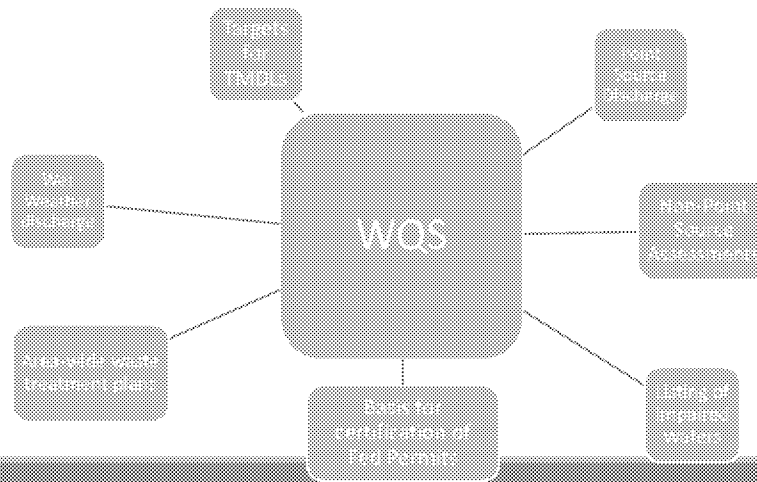
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*What is the process? Who does what?*

- ◊ 1992 NTR
- ◊ EPA recommended national criteria
- ◊ States adopt WQS for state waters subject to CWA
- ◊ Triennial review
- ◊ EPA review: approval or disapproval
- ◊ EPA promulgation post-disapproval
- ◊ EPA determination that a new or revised standard is needed, even in the absence of a state submission.

## WQS Enforced through:

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# WATER QUALITY CRITERIA (WQC) FOR THE PROTECTION OF HUMAN HEALTH (HHC)

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- HHC designed to minimize risk based on toxicity of pollutants (cancer and non-cancer) and exposure to pollutants over a life time.
  - Several exposure factors – fish consumption rate
  - Toxicity – cancer risk levels
  
- \* Toxicity and exposure are estimated in such a way as to insure WQC will protect human health.

# FISH CONSUMPTION RATE

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*What is a Fish Consumption Rate (FCR)? How much fish do people eat?*

- 1992 EPA National Toxics Rule (NTR): FCR 6.5 g/day
- EPA national recommended WQC updates:
  - 22 g/day general population
  - 142.4 g/day subsistence users
- EPA preference for use of local data; data hierarchy
  - Use of dietary surveys/ Tribal FCR Surveys
- Choice of Statistic:
  - Average
  - Upper Percentile 90% 95% 99%



# CANCER RISK LEVELS

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*What is the target cancer risk?*

- The target cancer risk is the risk that will result if a cancer causing chemical is present in water at a concentration equal to the WQC.
- EPA guidance
  - General population: between  $10^{-6}$  and  $10^{-5}$  (1 in 1 million and 1 in 1 hundred thousand)
  - Highly exposed Population: WQC for general population can't result in risk  $> 10^{-4}$  (1 in 10,000)

# TREATY RIGHTS ISSUES IN EPA REGION 10

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- \* General concepts:

- Treaties: supreme law of the land
- Treaties with Indian tribes and the rights guaranteed by those treaties must be construed liberally as they were understood by tribes at the time of signing, with ambiguities resolved in favor of tribes

- \* 1850s Stevens Treaties:

- Exclusive right to take fish within reservation boundaries
- Right to take fish at all usual and accustomed grounds and stations in common with citizens
- Right to hunt on open and unclaimed land
- Right to hunt on unoccupied lands

- \* Evolving Judicial Interpretation: access, habitat, management of natural resources

## TREATIES RIGHTS ISSUES IN R10 cont'd

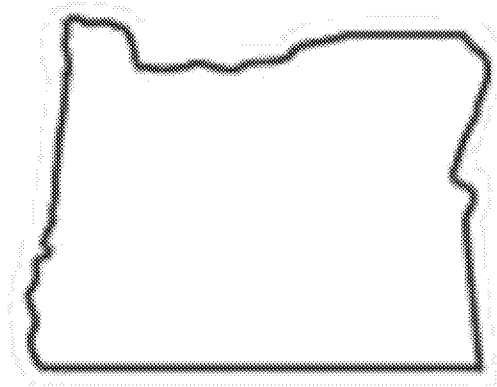
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- HHC must be calculated taking into consideration applicable treaty rights
  - Consultation with Tribes
- Implications:
  - Unsuppressed FCR, including historical FCR
  - Target general population
  - Cancer risk level

# Oregon WQS

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- 2010 EPA disapproved FCR 17.5 g/day
- 2011 EPA approved FCR 175 g/day and 10-6 CRL



## Washington WQS

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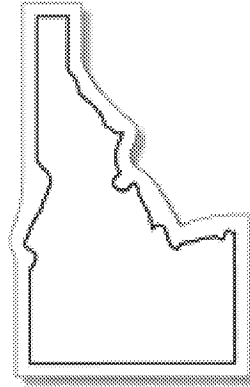


- 1992 NTR 6.5 g/day FCR and 10-6 CRL
- January 2015 WA released draft proposal FCR 175 g/day and 10-5 CRL
- July 2015 WA reconsidering proposal
- August 2014 EPA signed proposed federal rule, awaiting publication FCR 175 g/day and 10-6

# Idaho WQS

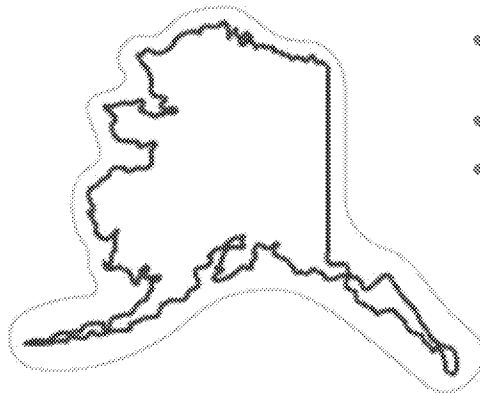
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- 2006 submittal: national default FCR  
17.5 g/day at that time and 10-6
- 2012 EPA disapproval
- 2014 Settlement Agreement
- August 2015 Draft Preliminary  
Proposal: FCR 16.1 g/day and 10-6 CRL



# Alaska WQS

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- 1992 NTR 6.5 g/day FCR based on national surveys and 10-5 CRL
- 2015-17 triennial review cycle
- Alaska Natives Claim Settlement Act (ANCSA); Alaska National Interests Land Conservation Act (ANILCA)

Thank you!

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